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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/637,529	08/11/2000	Robert C. Beck	1480	8331

7590 07/13/2005

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EXAMINER

DESANTO, MATTHEW F

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/637,529

**Applicant(s)**

BECK, ROBERT C.

**Examiner**

Matthew F. DeSanto

**Art Unit**

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2005.  
2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19 and 21-26 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 19, 21-26 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Objections***

1. The claim objections are withdrawn because of the amendment to the claims.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 19, 21-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Drasler et al. (USPN 5,496,267).

Drasler et al. discloses a fluid supply catheter, a lumen, a distal aperture, and a sheath, wherein the ablation catheter is located within the sheath and adapted for motion with respect to the sheath and wherein said aperture defining a first aperture defining a first aperture direction for the emerging flow that lies between approximate zero degrees and ninety degrees. (Figures 8, 10, 14, 17, 21, 25, 28 and entire reference)

4. Claims 19, 21-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Ruggio (USPN 5,476,450).

Ruggio discloses a fluid supply catheter, a lumen, a distal aperture (424), a control body (430) and a sheath, wherein the ablation catheter is located within the sheath and adapted for motion with respect to the sheath and wherein said aperture defining a first aperture defining a first aperture direction for the emerging flow that lies between approximate zero degrees and ninety degrees. (Figures 12, 13, 14, 15 and entire reference)

5. Claims 19, and 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Neracher (USPN: 5135482).

Neracher discloses an ablation catheter having a catheter having a body and catheter body have a distal tip where the distal tip has a first maximal diameter, a sheath having a internal lumen where the lumen has a diameter substantially equal to the first diameter of the ablation catheter, and where the ablation catheter is located within the sheath and adapted for motion with respect to the sheath, whereby the ablation catheter body can be moved independently of the sheath. Neracher teaches two types of internal diameter of the sheath with the ablation catheter (column 2, lines 13-53, Figures 2, 3 and 12).

Neracher also teaches a catheter body having a proximal and distal end, where the catheter body defines an axis, and the distal end having an approximately circular cross section, with a high pressure lumen in the catheter body terminating near the distal end and the annular aperture defining a first aperture defining a first aperture direction for the emerging flow that lies between approximate zero degrees and one hundred and eighty degrees, where the annular aperture cooperating with the catheter

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body to direct an annular sheet of fluid emerging from the aperture along the catheter body such that the distal end is substantially encircled with fluid from the aperture (Figures 2,4, and 12); as well as where a control body surface located immediate adjacent the aperture, providing a barrier located proximate the aperture, for limiting fluid entrainment from the location of the control body, near the aperture by the jet emerging from the aperture, whereby the jet is deflected by a pressure difference across the barrier,(Figures 6 and 9) and wherein a tangent drawn to the control body surface at the location of the aperture is parallel to the aperture direction (Figure 4) and where the tangent drawn to the control body to the aperture is greater then zero degrees, but less then ninety degrees, (Figure 10 and entire reference).

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 19, 21-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S.

Patent No. 6,129,698. Although the conflicting claims are not identical, they are not

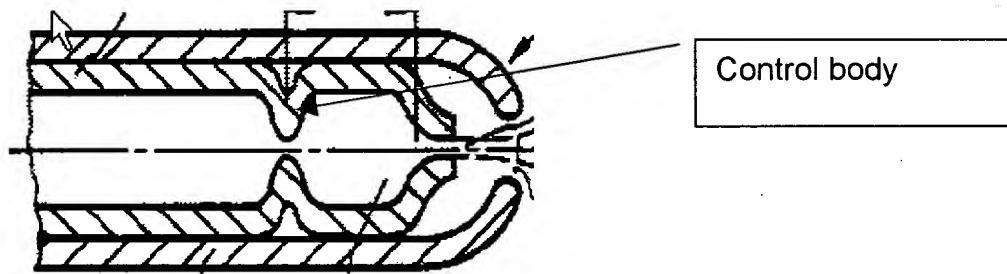
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patentably distinct from each other because the USPN 6129698 teaches a catheter body, apertures, and a control body.

### ***Response to Arguments***

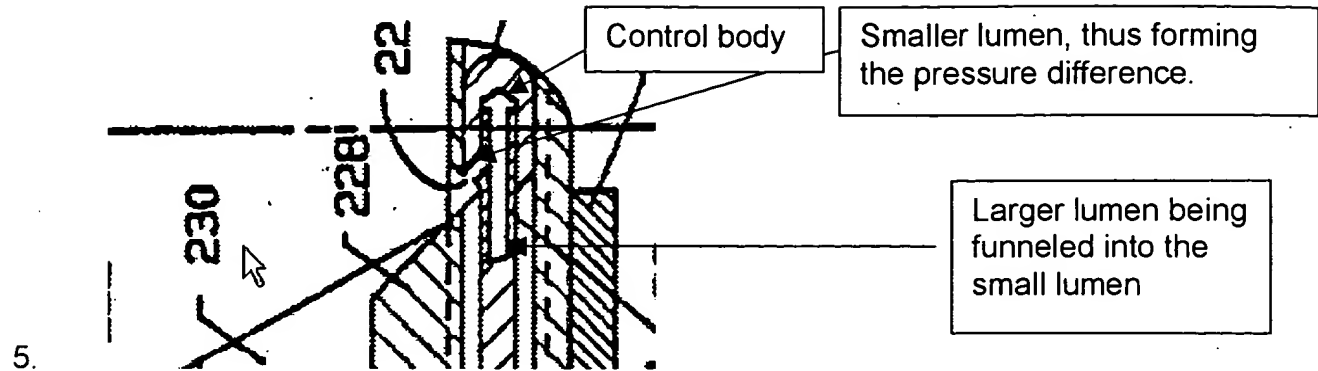
1. Applicant's arguments filed 4/20/05 have been fully considered but they are not persuasive, with regards to Drasler et al., Ruggio, and Neracher, because the applicant is arguing the control body located "downstream" or proximal said aperture. There is no similar language in the claims as mentioned above, and thus no weight is given to those arguments.

2. With regards to Neracher the examiner draws the attention of the applicant to figure 7, which shows the nozzle 11 of Neracher invention. See below.



4. With regards to Drasler et al. the applicant argues that the prior art fails to disclose a pressure difference across the jet. The examiner disagrees because structure is similar prior art, and thus would cause the Coanda effect, since a barrier is formed and a large lumen is funneled into a smaller lumen, thus causing the pressure difference. See figure below of figure 21;

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6. With regards to Ruggio, the examiner disagrees with the statements by the applicant, because Ruggio has a control body proximate the apertures and Ruggio teaches retrograde infusion as shown in figures 13, 14 and 15.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F. DeSanto whose telephone number is 571-272-4957. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick LUCCHESI can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Matthew DeSanto  
Art Unit 3763  
July 11, 2005



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